UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/CN.4/S-5/4
19 October 2000

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifth special session
17-19 October 2000
Agenda item 3

LETTER DATED 3 OCTOBER 2000 FROM THE PERMANENT REPRESENTATIVE OF ALGERIA TO THE UNITED NATIONS OFFICE AT GENEVA, ADDRESSED TO THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

Letter dated 19 October 2000 from the Permanent Representative of Israel to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

I am sending to you enclosed,* a copy of the official reply of the Israeli Foreign Minister to the report submitted by Mr. Giorgio Giacomelli, Special Rapporteur.

I would appreciate it if this response could be circulated as an official document of the Commission on Human Rights.

(Signed) Yaakov LEVY
Ambassador
Permanent Representative

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* The annex is reproduced in the language of submission only.

Annex

Israel's response to the report submitted by the Special Rapporteur, Mr. Giacomelli (E/CN.4/S-5/3), pursuant to Commission on Human Rights resolution 1993/2 A

General comments

1. Israel views the report submitted pursuant to resolution 1993/2 A (E/CN.4/S-5/3) with serious concern, both in view of its substantive content and the hostile and one-sided tone in which it is written. One may also question the political wisdom in conducting such a mission, from 11 to 15 October 2000, at the height of the crisis, when the Secretary-General of the United Nations was himself in the region, at the same time, conducting a vital mission to bring about a resolution of the crisis. The Secretary-General's efforts finally resulted in a summit at Sharem-el-Sheikh on 16 October 2000. Clearly, the Rapporteur's one-sided and untimely initiative can only be perceived as undermining the United Nations Secretary-General's delicate mission.

2. The mission undertaken by the Special Rapporteur to the region, on his own initiative, and his subsequent report illustrate once again the significant flaws of his mandate, which is one-sided, wholly biased and entirely outdated.

3. It highlights the prejudicial manner under which this Special Rapporteur functions, predetermining the outcome of his investigation, resolving ab initio that Israel is in violation of international law. Contrary to all other "geographical" rapporteurs who are appointed by the Commission on an annual basis, this Rapporteur has been assigned an open-ended mandate that is never subject to scrutiny, critique or modification. It is intrinsically obsolete and overlooks the changes in circumstances and the changing realities in the area.

The report

4. In what can clearly be described as nothing but a purely political exercise, the report constitutes a series of unsubstantiated allegations against Israel. It makes no attempt to distinguish between fact and opinion. It is rife with one-sided political assertions and value judgements and frequently prejudges issues presently under ongoing and direct negotiations between Israel and the Palestinians. Similarly, the conclusions and recommendations of the report were a predictable result of this exercise.

5. Those aspects that might have given a more balanced picture were conveniently ignored or otherwise curtailed, with no explicit reference to the source of the "serious violations" admitted by the Special Rapporteur as made, apart from Israel. The author of the report, who interpreted his task so widely in other areas, apparently felt that reference to such matters was beyond its scope.

6. If the author of the report considered himself authorized to give an assessment of the escalating violence in the territories and to lay blame, he should logically have given some

attention to the continued Palestinian violations of written commitments, particularly in the field of fighting terrorism and preventing incitement, violations that have continued unabated throughout the period under review in the report.

7. Members of the United Nations and the Commission on Human Rights should not delude themselves that a report of this nature can play any constructive role whatsoever.

8. Sadly, the report, and through it the Commission on Human Rights, repeatedly demonstrate a damaging tendency to bypass the process of direct negotiations with a view to influencing the negotiations and exerting pressure on Israel.

9. A few examples will suffice:

Sources of information

10. The report claims to be based on reliable sources. However, these sources are never identified. This raises the presumption that the sources are political. Thus, in the guise of citing unidentified sources, the Special Rapporteur makes a number of political assertions which are not only far from the task assigned by his mandate, but undermine any claim the report may lay to objectivity.

Scope of the report

11. The substantive part of the report provides an unquestioning platform for partisan political views. The report makes no attempt to distinguish between fact and opinion and is rife with value judgements and political insinuation. Sadly, the result tells the reader far more about the political bias of the author of the report than about the issues it was asked to cover.

12. In one of his many value judgements the Special Rapporteur states, without any legal basis, that "Israel was bound upon its establishment by the terms of the 'partition of Palestine'" resolution, General Assembly resolution 181 (II). The Special Rapporteur perhaps was unaware that this resolution as with all General Assembly resolutions is, by definition, not legally binding in terms of international law, and its continued relevance, after more than 50 years, is questionable.

13. Similarly, the Special Rapporteur seems to have forgotten that pursuant to the Oslo accords and the consequent undertakings, about 99 per cent of the Palestinian population in the West Bank and all residents of the Gaza Strip are living under autonomous Palestinian administration, and are not under the effective control and jurisdiction of Israel.

The right to life

14. In yet another unfounded and judgemental assertion, the Special Rapporteur charges Israel with using excessive force against so-called "civil demonstrators" in the territories. This, however, is clearly a misconceived and unfounded depiction of reality. In fact, the utmost

restraint exemplifies the conduct, in conformity with international standards and far beyond, of the Israeli forces throughout these incidents. Israeli security personnel returned fire only when absolutely necessary and when faced with an imminent threat to life.

15. Furthermore, the Israeli Government, demonstrating the utmost responsibility, targeted only specific snipers and firing positions, thereby minimizing damage and injury. Contrary to the fallacious allegations made in the report, specific warnings and due notice were given in advance to the Palestinian Authority before firing at specific targets.

16. Throughout the last weeks, hundreds of violent incidents and riots have been initiated daily in the West Bank and the Gaza Strip by extremist Palestinians, both civilians, members of the Palestinian Police and members of illegal paramilitary units. In particular, we have witnessed unprecedented Palestinian attacks and use of violence and weapons against Israelis residing in the areas, as well as against Jewish holy sites and property. Terrorist activities have been daily perpetrated by gathering Palestinian mobs, roadside bombs have been set off near Israeli homes and shots are being fired directly into private homes. The Special Rapporteur seems, strangely, to have overlooked the lynching of two Israelis who were brutally tortured and slaughtered by a Palestinian mob inside a Palestinian police station, orchestrated with the overall support of the Palestinian Police.

17. In this respect, the report makes yet another cursory reference to the role of the Israeli settler population, describing them as an "increasingly obvious source of paramilitary activity". This description also suffers from extreme manipulation and selectivity, especially when it is evident to all that the main elements inciting and carrying out the acts of violence are the paramilitary Palestinian groups, the Tanzim, and other gathering mobs.

18. Despite extreme situations which clearly permit the Israeli forces to ease enforcement of the rules of engagement, these rules nonetheless remained unchanged, similar to the rules of engagement applied by the Israeli police. The use of live ammunition by Israeli forces is authorized as a means of self-defence only where there is an imminent threat to life or threat of serious injury, that is, in reaction to Palestinian attacks with live ammunition. Any other authorization to use live arms requires direct approval by the most senior officers of the Israel Defence Forces.

19. It is clear that these violent incidents have been supported and encouraged by the Palestinian leadership in blatant violation of written commitments and at a time when the peace process was at an advanced and crucial stage. The fact that the Palestinian Authority and its leadership have chosen to resort to violence as a means to pressure Israel into concessions at the negotiating table is all the more to be regretted and condemned.

20. Moreover, particularly troubling is the use of young Palestinian children as human shields during the riots against Israeli forces, in contradiction of basic international norms and standards. Though there would be no way for the reader of the report to know this, the report fails to mention this aspect when referring to the killings of young children. While the Government of Israel deeply regrets the recent events and the loss of life, both of Palestinians and Israelis, the implication that it has been irresponsible in this respect can only be considered as blatantly misleading.

21. The Palestinian leadership has deliberately and cynically encouraged the tragic involvement of children in the riots, sending them to accompany the Palestinian fighters and terror mobs, so that the children will be seen to be killed and wounded, with all the concomitant media attention and world sympathy.

Other issues addressed in the report

22. The reference by the Special Rapporteur to Joseph's Tomb is disingenuous, to say the least, and an affront to basic intelligence. In the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, the Government of Israel and the PLO agreed that Jewish holy sites in the areas under the administration of the Palestinian Authority would be duly respected and protected, with Israeli presence at the site.

23. During the course of violence, incitement and rioting in the West Bank, this site became the target of gunfire and violent attacks, both by mobs of Palestinian civilians and by armed militia and members of the Palestinian police, in stark and blatant violation of all agreements with Israel. This even led to the death of an Israeli police officer on duty within the site, after Palestinian officials refused to allow his safe evacuation after having been severely wounded by Palestinian gunfire.

24. With a view to reducing tension, an arrangement was reached on 6 October 2000 between the Israeli Defence Forces and the Palestinian police, whereby the Israeli personnel on duty at the Tomb would be removed from the site, as a temporary measure, and the Palestinian Authority would ensure its continued protection and preservation.

25. The Palestinian side violated this arrangement. Upon the removal of the Israeli personnel, frenzied Palestinians, together with members of the Palestinian police, entered the site, set it ablaze, sacked it, violated it and commenced dismantling the historic and sacred structure of the Tomb. This was sacrilege.

26. Needless to say, and despite the fact that the above facts were circulated in a United Nations document, this was not reflected in his report by the Special Rapporteur, who cynically chose to blame Israel for aggravating the situation by "militarizing" that site.

27. The report raises general allegations regarding security abuses. The unsubstantiated nature of these allegations defies a detailed response. However, one can only wonder at the irresponsible approach which guided the author of the report to make such allegations without considering that there was any need to make reference to the intense incitement, violence and terrorist attacks that give rise to the necessity for such preventive or deterrent measures on the part of Israel.

28. Thus, it is seen fit in the report to raise charges against Israel for imposing curfews and closures but not to mention the inseparable fact that terrorist attacks since the start of these riots have been directed against Israelis, many of them civilians. Nor was it seen fit in the report to even consider the agonizing dilemma facing the State of Israel in balancing its duty to protect the lives of its inhabitants from terrorist attacks and its obligation to respect basic human rights.

Only when reliable information indicating an imminent terrorist attack is received, or immediately following a terrorist attack, or on particularly sensitive dates when the likelihood of attacks increases, does it become necessary to restrict the movement of Palestinians into Israel.

29. Such restrictions have been sparingly used during the recent riots, and are primarily intended to restore public safety within Israel and prevent further terrorist riots.

Conclusion

30. The biased and selective nature of the report indicates very clearly that the Special Rapporteur made no effort whatsoever to tackle the complexities of the issues, but nonetheless found no difficulty in passing his own politically biased value judgements on the events.

31. He has not hesitated to present uncorroborated reports of fact and partisan political views without question or criticism. In a deeply troubling display of irresponsibility he blames Israel for incidents initiated against it, thus absolving the Palestinian side from any responsibility.

32. Far from contributing in any way to a resumption of peaceful negotiations, the report conveys a clear message to the Palestinian side that the United Nations is a convenient and willing forum for bypassing the peace process.

33. Sadly, this report is inconsistent with the concept of bona fides, or of what one would expect of a special rapporteur within the United Nations system.

34. Those actively involved in escalating violence and trying to undermine the peace process will doubtless draw considerable encouragement from that document. But those who hold out hope for peaceful resolution of differences through negotiation can only be seriously disappointed.